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3
4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 STEPHEN J. SCHULTZ,

Case No. 2:19-cv-00096-RFB-PAL

8 Plaintiff,

SCREENING ORDER

9 v.

(IFP App – ECF No. 1)

10 NANCY A. BERRYHILL, Acting
11 Commissioner of Social Security,

12 Defendant.

13 Plaintiff Stephen J. Schultz has submitted an Application to Proceed *In Forma Pauperis*
14 (ECF No. 1) along with a proposed Complaint (ECF No. 1-1). This Application and Complaint
15 are referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(A) and LR IB 1-3 of the Local
16 Rules of Practice.

17 **I. APPLICATION TO PROCEED *IN FORMA PAUPERIS***

18 Mr. Schultz’s Application includes the affidavit required by 28 U.S.C. § 1915(a) showing
19 an inability to prepay fees and costs or give security for them. Accordingly, the request to proceed
20 *in forma pauperis* (“IFP”) will be granted. The court will now review the proposed complaint.

21 **II. SCREENING THE COMPLAINT**

22 **A. Legal Standards**

23 After granting a request to proceed IFP, federal courts must screen a complaint and any
24 amended complaints before allowing a case to move forward, issuing summonses, and requiring a
25 responsive pleading. *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc). Courts are
26 required to dismiss an IFP action if the complaint fails to state a claim upon which relief may be
27 granted, is legally “frivolous or malicious,” or seeks money from a defendant who is immune from
28 such relief. 28 U.S.C. § 1915(e)(2). The standard for determining whether a plaintiff has failed

1 to state a claim upon which relief can be granted under § 1915 is the same as the standard under
2 Rule 12(b)(6) of the Federal Rules of Civil Procedure¹ for failure to state a claim. *Watison v.*
3 *Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012).

4 A properly pled complaint must provide “a short and plain statement of the claim showing
5 that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). To avoid dismissal, a plaintiff must
6 allege enough facts to state a claim for relief that is plausible on its face. *Bell Atlantic Corp. v.*
7 *Twombly*, 550 U.S. 544, 570 (2007). A claim has facial plausibility when a plaintiff alleges factual
8 content that allows the court to make a reasonable inference that a defendant is liable for the claim
9 alleged. *Teixeira v. County of Alameda*, 873 F.3d 670, 678 (9th Cir. 2017) (quoting *Ashcroft v.*
10 *Iqbal*, 556 U.S. 662, 678 (2009)).

11 Here, Schultz challenges a decision by the Social Security Administration (“SSA”) denying
12 him disability insurance benefits under Title II of the Social Security Act. Compl. ¶ 3. To state a
13 valid benefits claim, a complaint must give the Commissioner fair notice of what the plaintiff’s
14 claim is and the grounds upon which it rests. *See Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir.
15 2011). A plaintiff must present sufficient detail for the court to understand the disputed issues so
16 that it can meaningfully screen the complaint. *See* 4 Soc. Sec. Law & Prac. § 56:4 (2016); 2 Soc.
17 Sec. Disab. Claims Prac. & Proc. §§ 19:92–93 (2nd ed. 2015). To do so, a complaint should state
18 *when* and *how* a plaintiff exhausted her administrative remedies with the SSA and the nature of
19 her disability, including the date she claims she became disabled. The complaint should also
20 contain a short and concise statement identifying *why* the SSA’s decision was wrong and showing
21 that the plaintiff is entitled to relief. *Sabbia v. Comm’r Soc. Sec. Admin.*, 669 F. Supp. 2d 914,
22 918 (N.D. Ill. 2009), *aff’d* by 433 F. App’x 462 (7th Cir. 2011).

23 **B. Exhaustion of Administrative Remedies**

24 Before a plaintiff can sue the SSA in federal court, he must exhaust his administrative
25 remedies. 42 U.S.C. § 405(g); *Bass v. Social Sec. Admin.*, 872 F.2d 832, 833 (9th Cir. 1989)
26 (“Section 405(g) provides that a civil action may be brought only after (1) the claimant has been
27 party to a hearing held by the Secretary, and (2) the Secretary has made a final decision on the

28 ¹ All references to a “Rule” or the “Rules in this Order refer to the Federal Rules of Civil Procedure.

claim”). Generally, if the SSA denies an application for disability benefits, a claimant can request reconsideration of the decision. If the claim is denied upon reconsideration, a claimant may request a hearing before an Administrative Law Judge (“ALJ”). If the ALJ denies the claim, a claimant may request review of the decision by the Appeals Council. If the Appeals Council declines review, a claimant may then request review by the United States District Court. 20 C.F.R. §§ 404.981, 416.1481. A civil action for judicial review must be filed within 60 days after receipt of the Appeals Council’s notice of a final decision. *Id.*; 42 U.S.C. § 405(g); 20 C.F.R. § 405.501. The SSA assumes that the notice of final decision will be received by mail within five days of the date on the notice unless shown otherwise. 20 C.F.R. §§ 416.1401, 422.210(c). Thus, an action commenced within 65 days is presumed timely. *Id.* If a claimant does not file a civil action within the allowed time frame, he or she loses the right to judicial review. 20 C.F.R. § 404.900(b). The civil action must be filed in the judicial district in which the claimant resides. 42 U.S.C. § 405 (g).

In this case, Mr. Schultz alleges that on November 19, 2018, the Appeals Council denied the request for review and the ALJ’s decision became the final decision of the Commissioner. Compl. ¶ 8. Thus, it appears he has exhausted his administrative remedies. He timely commenced this action as the Complaint was filed on January 16, 2019, and the Complaint indicates that he resides within the District of Nevada. *Id.* ¶ 1. Accordingly, Schultz has satisfied these prerequisites for judicial review.

C. Grounds for Schultz’s Appeal

The Complaint seeks judicial review of the Commissioner’s final decision and asks the court to reverse that decision, or alternatively, to remand this matter for a new hearing. A district court can affirm, modify, reverse, or remand a decision if plaintiff has exhausted his administrative remedies and timely filed a civil action. However, judicial review of the Commissioner’s final decision is limited to determining whether: (1) there is substantial evidence in the record as a whole to support the Commissioner’s findings; and (2) the correct legal standards were applied. *Morgan v. Comm’r Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999).

In his Complaint, Mr. Schultz alleges he has been disabled since the application date of November 10, 2011, through his date last insured of December 31, 2016. Compl. ¶ 5. The ALJ

1 found Schultz to have the severe impairments of complex partial seizures, lower extremity
2 neuropathy, secondary to diabetes mellitus, hypertension, obstructive sleep apnea, and obesity. *Id.*
3 ¶ 9(a). Despite his severe impairments, the ALJ determined Schultz had the residual functional
4 capacity to perform light work:

5 he can lift and/or carry 20 pounds occasionally and 10 pounds frequently. He can
6 stand and/or walk no more than 30 minutes at a time, stand no more than 3 hours
7 in an 8 hour workday, and walk no more than 1 hour in an 8-hour workday. He can
8 sit for 2 hours at a time, and up to 8 hours in an 8-hour workday. He can push and/or
9 pull hand controls occasionally, and continuously reach, handle, finger, and feel.
10 He can operate foot controls occasionally. He can occasionally climb ramps and/or
11 stairs, but never climb ladders, etc. He needs a cane for balance, and can
occasionally stoop, kneel, crouch, and crawl. He must avoid all exposure to extreme
cold and heat, and vibration. He can occasionally tolerate exposure to humidity and
wetness, fumes, gases, odors, dusts, and pulmonary irritants. He can frequently
operate a motor vehicle, but exposure to unprotected heights and mechanical parts
is precluded

12 *Id.* ¶ 9(b). The ALJ found that Schultz could not perform past relevant work, but could perform
13 other work as a packager, inspector, and assembler. *Id.* ¶ 9(c), (d).

14 Mr. Schultz alleges that the ALJ's decision lacks the support of substantial evidence for
15 multiple reasons. The ALJ committed reversible error by (1) improperly rejecting Schultz's pain
16 and symptom testimony; (2) finding that the vocational expert's testimony is consistent with the
17 information in the *Dictionary of Occupational Titles* (DOT); and (3) erroneously applying the light
18 medical vocational rules, given Schultz's standing and walking limitations. *Id.* ¶ 9(e), (f), (h).

19 The Complaint contains sufficient factual allegations to give the Commissioner fair notice
20 of Schultz's disagreement with the final decision. *See Starr*, 652 F.3d at 1216. Accordingly, his
21 Complaint states a plausible claim for initial screening purposes.

22 Based on the foregoing,

23 **IT IS ORDERED:**

- 24 1. Plaintiff Stephen J. Schultz's Application to Proceed *In Forma Pauperis* (ECF No. 1)
25 is **GRANTED**. He will not be required to pay the \$400 filing fee.
- 26 2. Mr. Schultz is permitted to maintain this action to conclusion without prepaying any
27 fees or costs or giving security therefor. However, this Order granting IFP status does
28 not extend to the issuance and/or service of subpoenas at government expense.

